
(2002) 11 AP CK 0044
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3499 of 2000

A. Aruna and Others

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21

Citation : (2002) 6 ALD 548 : (2003) 2 ALT 770

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : D. Jaipal Reddy, B. Venkata Reddy, K.N. Jwala and C. Srinivas Reddy, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—In this batch of writ petitions, the petitioners initially questioned the constitutionality of the Andhra Pradesh Motor Vehicles Taxation (Amendment) Act, 1995 (for short "Amendment Act 23 of 1995") by which the levy and collection of life tax has been enhanced from 5% to 7% on the cost of the vehicle on four wheelers which are used for personal purpose. After hearing this batch of writ petitions, when the Court pointed out that by Amendment Act 23/1995, the Legislature has only enhanced the rate of life tax from 5% to 7%, but the method of computing life tax on the basis of the unladen weight and value of the vehicle was introduced in case of four wheelers by Andhra Pradesh Motor Vehicles Taxation (Amendment) Act, 1992 (for short "Amendment Act 11, of 1992") and that Amendment Act 11 of 1992 was not challenged, some of the petitioners amended the prayers in the writ petitions so as to challenge the constitutionality of Amendment Act 11/1992 also.

2. Before dealing with the contentions raised by the petitioners in assailing the constitutionality of Amendment Act 11 of 1992 and Amendment Act 23 of 1995, it would be beneficial to briefly state the historical background of the law relating to Motor Vehicles Taxation in the State of Andhra Pradesh leading to the

enactment of the Andhra Pradesh Motor Vehicles Taxation Act, 1963 (Act No. 5 of 1963) for short "the Act". The modern State of Andhra Pradesh was formed by combining and integrating the Telugu speaking parts of erstwhile State of Hyderabad and the erstwhile State of Andhra. The State of Andhra itself was formed out of the Telugu speaking areas by separating those areas from the erstwhile composite State of Madras. At the time of the formation of the State of Andhra, the Madras Motor Vehicles Taxation Act, 1931 was in force. In addition to these, the Madras Motor Vehicles Taxation (Passengers and Goods) Act, 1952 was also in force. The State of Hyderabad had also enacted a similar law, i.e., the Hyderabad Motor Vehicles Taxation Act, 1955. Consequent upon the creation of the new State of Andhra Pradesh, the above named three Acts came to be called as (1) Andhra Pradesh (Andhra Area) Motor Vehicles Taxation Act, 1931, (2) Andhra Pradesh (Telangana Area) Motor Vehicles Taxation Act, 1955 and (3) Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) Act, 1952.

3. The Andhra Pradesh Motor Vehicles (Taxation and Passengers and Goods) Act, 1952, which was initially named as Madras Motor Vehicles (Taxation of Passengers and Goods) Act, 1952, levied tax on all passengers, luggage and goods carried by stage carriages and on all goods transported by public carrier vehicles. This Act applied to the Andhra Area of the State of Andhra Pradesh and the transport operators of Telangana area were not required to pay any tax under this Act, though the operators of the Telangana region were plying their vehicles in the Andhra area also. As far as the other two Motor Vehicle Taxation Acts are concerned, the State Acts were operating in Andhra area and Telangana area respectively. With a view to consolidate all these Acts, the Andhra Pradesh State Legislature enacted Andhra Pradesh Motor Vehicles Taxation Act, 1963. The Andhra Pradesh (Andhra Area) Motor Vehicles Taxation Act, 1931, Andhra Pradesh (Telangana Area) Motor Vehicles Taxation Act, 1955 and Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) Act, 1952 were repealed u/s 18 of the Act. The Andhra Pradesh (Andhra Area) Motor Vehicles Taxation Act, 1931. The Andhra Pradesh (Telangana Area) Motor Vehicles Taxation Act, 1955 were enacted under Entry 57 of List II of the VII Schedule whereas Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) Act, 1952 was enacted under Entry 56 of List II of the VII Schedule of the Constitution of India.

4. After the enactment of the present Act in the year 1963, all motor vehicles were being taxed under the said Act in accordance with the Entries and tax fixed under Schedule I of the Act. The II Schedule provides for the rate of tax payable on temporary licence which may be issued and charged under Sub-section (4) of Section 4 of the Act. These temporary licences can be issued for that purpose up to 30 days. The III Schedule was introduced in the Act by Andhra Pradesh Motor Vehicles Taxation Amendment Act (Act No. 15 of 1987) with effect from 1.4.1987. In this schedule, life tax for non-transport vehicles were prescribed and the same was to be paid in lumpsum. For the purpose of fixation of tax, the vehicles were categorised into two wheelers and four wheelers. Within the category of two wheelers, there was further classification into vehicles not

exceeding 60 CC and vehicles exceeding 60 CC. The four wheelers were classified into three categories on the basis of unladen weight. It was also specified that the vehicles exceeding 2,286 kgs unladen weight fell outside the III Schedule and would have to be taxed in accordance with the I Schedule. The constitutionality of Amendment Act 15/1987 was questioned in this Court in a batch of writ petitions being W.P. No. 3114 of 1987 and Batch (Narsing v. State of A.P.). A Division Bench of this Court by its judgment-dated 27.9.1988 upheld the constitutionality of Amendment Act 15 of 1987 and dismissed the writ petitions.

5. The III Schedule was subsequently amended by Amendment Act 11 of 1992 with effect from 15.4.1992. Under that amendment, the life tax was to be computed on the basis of the unladen weight of the vehicle and the value of the vehicle. There was no change in the computation of tax for two wheelers and this amendment was effected only for four wheelers. The payment of tax was to be lumpsum amount prescribed in the III Schedule or 5% of the cost of the vehicle, whichever is higher. The III Schedule was thereafter again amended by Amendment Act 23 of 1995 with effect from 24.5.1995 by which the levy and collection of life tax has been enhanced from 5% to 7% for four wheelers.

6. It is not necessary to refer to the facts of each and every writ petition because they are not relevant for the decision-making. It would be sufficient to refer to the facts of the 1st writ petition being WP No. 3499 of 2000. The petitioner in W.P. No. 3499 of 2000 purchased Accent Car GLS A/T power steering etc., of Hyundai Motor India Limited with Chassis No. MAHCH 41 GRYM003817 Engine No. GAEBYM 003849 under Invoice No. A199910051 dated 21.2.2000 for a total consideration of Rs. 6,14,573/-and approached the Joint Transport Commissioner, who is the registering authority under the Act and sought for registration of the said car. The petitioner was informed that he would have to pay life tax which works out to Rs. 43,020/ - in terms of Schedule III as amended by Amendment Act 23 of 1995 and he was told that unless the life tax of Rs. 43,020/-was paid the vehicle would not be registered. The petitioner has also stated that the 2nd respondent refused to accept the annual tax though the petitioner offered to pay the same. In the above factual background, Writ Petition No. 3499 of 2000 was filed praying for a writ of mandamus declaring the impugned Andhra Pradesh Motor Vehicles Taxation Amendment Acts as unconstitutional. Similar reliefs are sought in other writ petitions also.

7. The contentions raised in the affidavits filed in support of the writ petitions while assailing the constitutionality of the Amendment Acts are: (1) The impugned provisions are violative of Articles 14 and 19(1)(g) of the Constitution; (2) the impugned Amendment Acts are beyond the legislative competence of the Andhra Pradesh State Legislature; (3) the life tax ceased to be compensatory and, therefore, unconstitutional; (4) since the motor vehicle tax is a compensatory tax, the basis of the tax ought to be either the weight of the vehicle or its seating capacity or the mileage travel and, therefore, the imposition

of different rates of tax depending upon the make of the vehicle or whether it is the imported vehicle or locally made vehicle or on the basis of the value of the vehicle is ex facie illegal and invalid; (5) the levy of substantial amounts of tax which is nearly 20 times and more of the annual tax in respect of four wheelers on a compulsory basis would result in the Motor Vehicle Tax ceasing to be regulatory and compensatory and would, therefore, fall outside the legislative competence of the State Legislature; (6) the classification of four wheelers of the same unladen weight on the basis of the cost of the vehicle does not satisfy the two tests viz., (a) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (b) that, that differential must have a rationale relation to the object sought to be achieved by the statute in question and, therefore, the classification made by the impugned amendments cannot be sustained and they attract the wrath of Article 14 postulates; (7) as per the scheme of the Act, liability to pay tax arises u/s 3 and can be paid either quarterly or half yearly or annually as provided u/s 4. Therefore, the impugned provisions are inconsistent with the scheme of levy of tax u/s 3 of the Act; (8) the levy of different amounts of taxes on the basis of the value of the vehicle is ex facie discriminatory and such levy would not be compensatory in nature and, therefore, it tantamounts to levy on the ownership of the vehicle.

8. On behalf of the State of Andhra Pradesh and its authorities, a counter-affidavit is filed in WP No. 3499 of 2000 while praying the Court to treat that counter as a common counter to all the writ petitions. In the counter, it is inter alia, contended that the whole basis of the writ petitions is the judgment of the Madras High Court in Krishnappan M v. State of Tamil Nadu and Anr., 2001-1-LW 603, and that the several grounds urged before the Madras High Court are not available to the petitioners while questioning the constitutionality of the impugned Amended Acts. The only ground on which the petitioners are relying on the judgment of the Madras High Court is that declaration of the levy of life tax taking into account the cost of the vehicle as the basis for computing the rate of tax is without competence and violative of Articles 14 and 19(1)(g) of the Constitution of India. The opinion of the Madras High Court that the levy of tax based on the cost of the vehicle is unconstitutional because it is based on the cost of the vehicle and, therefore, it ceased to be compensatory and regulatory in nature is untenable and in taking such opinion, the Madras High Court overlooked the judgment of the Supreme Court in Shaktikumar M. Sancheti and Another Vs. State of Maharashtra and Others, , and State of Bihar v. Bihar Chamber of Commerce, : [1996]2SCR184 . The ground that as per the scheme of the Act, liability to pay tax arises u/s 3 and that can be paid either quarterly, half yearly or annually is provided u/s 4 and, therefore, the impugned provisions are inconsistent with the scheme of levy of tax u/s 3 of the Act was in fact raised in the case of Narsing v. State of A.P. 1989 (1) ALT 24 , (W.P. No. 3114 of 1987 and Batch), where the constitutional validity of the Amendment Act 15 of 1987 was questioned and that contention was negated by the Court and, therefore,

the same ground cannot be urged by the petitioners in the present batch of writ petitions and such contentions are barred by the principle of *res judicata*. Even some of the other contentions raised in the present batch of writ petitions such as the impugned provisions are unconstitutional and violative of Articles 14 and 19(1)(g) of the Constitution; the tax ceased to be compensatory; since the motor vehicle tax is a compensatory tax, the basis of the tax ought to be either the weight of the vehicle or its seating capacity and in some cases, the mileage travel only and the imposition of different rates of tax depending upon the make of the vehicle or whether it is an imported vehicle or locally made vehicle is illegal and invalid, are untenable because those contentions were earlier raised in the case of *Narsing* (*supra*) and they were rejected by the Court and, therefore, they are barred by principle of constructive *res judicata*. The respondents have also asserted that the impugned provisions of the Acts are well within the legislative competence of the Andhra Pradesh State Legislature and that the petitioners have not made out any grounds whatsoever to declare the impugned Amendment Acts as unconstitutional.

9. We have heard M/s. D. Jaipal Reddy, B. Venkata Reddy, K.N. Jwala, C. Srinivas Reddy for the petitioners and M/s. A. Ramaiah and Bhaskar Reddy, Special Government Pleader for Taxes for the respondents.

10. Although the learned Counsel for the petitioners meekly reiterated most of the contentions raised in the writ affidavits, the one contention that was put forth before us by the learned Counsel for the petitioners with force is that since the impugned amendments provide for computation of life tax in respect of four wheelers on the basis of the cost of the vehicles, the life tax ceased to be a compensatory and regulatory tax and it tantamounts to taxing on the ownership of the vehicle and such a power is not available to the Andhra Pradesh State Legislature. The learned Counsel for the petitioners contended that before the Amendment Act 11 of 1992 and Amendment Act 23 of 1995, only the unladen weight was the basis for computation of tax, but after the impugned amendments, both unladen weight and cost of the vehicles are the basis for determination of the tax and this departure made by the Andhra Pradesh State Legislature by enacting the impugned amendments has no constitutional sanctity. The learned Counsel also contended that in case of old vehicles, even after the impugned amendments, tax is levied on the basis of the unladen weight whereas in the case of new vehicles covered by Item No. 1 of III Schedule of the Act, tax is levied on the basis of unladen weight as well as the cost of the vehicles and this differential treatment meted out to the owners of the new vehicles tantamounts to an invidious discrimination. It is also contended that by enacting the impugned provisions, the tax purported to be compensatory and regulatory has been reduced to a kind of compulsory tax. It is also contended by the learned Counsel that tax to be levied under the Act should be based on user of the road and not on the basis of the cost of the vehicle and if the latter is true, it would cease to be compensatory in nature. In addition to the above common contentions of the learned Counsel for the petitioners, Sri B. Venkat Reddy,

learned Advocate appearing for the petitioner in W.P. No. 8459 of 2000 and some other writ petitions, contended that the impugned amendments are not in consonance with the object of the Act; Pollution control is one of the objects of the Act and the impugned amendments would encourage persons to buy low priced vehicles to avoid higher tax and in that process number of such vehicles will be increased resulting in more and more pollution of the environment and looking from that angle also, the impugned amendments should be held violative of the rights guaranteed under Article 21 of the Constitution of India.

11. On the other hand, the learned Special Government Pleader for Taxes supported the impugned amendments and maintained that the most of the contentions raised in the present writ petitions were earlier raised and rejected by this Court in the case of Narsing (*supra*) where the constitutionality of Amendment Act 15 of 1987 was challenged and, therefore, there is no necessity for this Court to consider the very same contentions in the present batch of writ petitions. Even otherwise, the learned Special Government Pleader for Taxes maintained that there are absolutely no merits in those contentions for the reasons already given by the Court in the judgment in the case of Narsing (*supra*).

12. Sri Bhaskar Reddy, learned Special Government Pleader for Taxes contended that the impugned amendments are strictly within the four corners of Articles 14 and 19(1)(g) of the Constitution of India and, therefore, the contentions raised in the writ petitions that the impugned amendments violate the rights of the petitioners guaranteed under Article 14 and 19(1)(g) of the Constitution of India is baseless. He contended that the Motor vehicles tax is both compensatory as well as regulatory and levy of tax on the basis of the value of the vehicle is part of the regulatory framework and as such levy of the said tax is very much within the competence of the Andhra Pradesh State Legislature and does not offend any of the constitutional limitations. He also contended that there need not be an exact co-relation to the actual usage of roads or to the weight of the vehicle to the quantum of the tax payable. Sri Bhaskar Reddy also contended that the judgment of the Madras High Court in Krishnappan M v. State of Tamil Nadu and Anr. (*supra*) in the first instance is distinguishable on facts and having regard to the provisions of the Act. Secondly, Sri Bhaskar Reddy contended that unfortunately the Madras High Court did not consider the judgments of the Apex Court in Shaktikumar M. Sancheti and Bihar Chamber of Commerce (*supra*) which have a direct bearing in the decision-making. Sri Bhaskar Reddy contended that the life tax is computed on the basis of annual tax for a period of 12 years and, therefore, it cannot be said that life tax ceased to be compensatory and regulatory and that it has become a kind of compulsory tax. Imposition of life tax is restricted to only private vehicles and the classification made by the impugned amendments is based on an intelligible differential and, therefore, it cannot be condemned as irrational or arbitrary, nor could it be said that such a differential treatment to private vehicles tantamounts to invidious discrimination. Sri Bhaskar Reddy, while concluding, would highlight that in view

of the complexities of modern times in the field of taxation, the Constitutional Courts have always allowed a wide latitude while categorising various categories of persons or objects for the purpose of taxation and that the classification that may be made by the Legislature need not satisfy the norm of mathematical precision.

13. Having regard to the rival contentions advanced by the learned Counsel for the parties, the only substantive main question that arises for our consideration and decision is whether the impugned amendments to the extent they permit computation of life tax in respect of four wheelers other than chassis of motor vehicles and omni buses on the basis of the cost of those vehicles is unconstitutional, besides certain other subsidiary questions such as whether the impugned provisions are unconstitutional, ultra vires the power of the State Legislature and offend Articles 14 and 19(1)(g) of the Constitution; whether the levy of life tax is compensatory or regulatory in nature or ceases to be compensatory.

14. Before dealing with the contentions, it will be beneficial to notice the relevant statutory provisions. Clause (b) of Section 2 defines "laden weight" in relation to a motor vehicle or a "trailer attached to it". It reads as follows:

"2(b) Laden weight in relation to a motor vehicle or a trailer attached to it "means, if a permit is issued to the motor vehicle under the Motor Vehicles Act, 1939, the maximum laden weight specified for the motor vehicle or the trailer in such permit; if no such permit is issued, the maximum laden weight specified for the motor vehicle or the trailer in the certificate of registration of the motor vehicle and in case such weight is not specified in such certificate, the maximum laden weight of the motor vehicle or the trailer determined in such manner as may be prescribed."

Clause (h) of Section (2) defines "tax". It reads as follows:

"2(h) "Tax" means the tax leviable under the Act."

15. Section 3 of the Act is the charging section whereas Section (4) deals with payment of motor vehicle tax and grant of licence. They read as follows:

"3. Levy of tax on motor vehicles :--(1) The Government may, by notification, from time to time, direct that a tax shall be levied on every motor vehicle used or kept for use in a public place in the State.

(2) The notification issued under subsection (1) shall specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied;

Provided that the rates of tax shall not exceed the maximum specified in column (2) of First Schedule in respect of the classes of motor vehicles fitted with pneumatic tyres specified in the corresponding entry in column (1) thereof; and one and half times the said maximum in respect of such classes of motor

vehicles as are fitted with non-pneumatic tyres;

Provided further that in the case of motor cycles (including motor scooters and cycles with or without attachment), invalid carriages, motor cars and jeeps and other non-transport vehicles not exceeding 2286 kgs, in unladen weight except omnibuses and chassis of motor vehicles, the tax shall be levied at the rates specified in the Third Schedule.

Provided also that in respect of a chassis of a motor vehicle passing through this State from a manufacturer to a dealer under a temporary certificate of registration for a period not exceeding seven days, the rate of tax shall be one twentieth of the tax payable for a quarter.

Provided also that in respect of motor vehicles operated with battery/compressed natural gas/solar energy, no tax shall be levied for a period of five years from the date to be notified."

16. The second proviso to Sub-section (2) of Section 3 of the Act was added by Section 2 of Amendment Act 15 of 1987 with effect from 1.4.1987 vide A.P. Gazette Part IV-B Ext, dated 16.2.1987.

"4. Payment of tax and grant of licence :--

(1)(a) The tax levied under this Act shall be paid in advance and in the manner specified in Section 11, by the registered owner of the motor vehicle or any other person having possession or control thereof, at his choice, either quarterly, half yearly or annually on a licence to be taken out by him for the quarter, half year, or year, within fifteen days from the commencement of the quarter, half-year or year as the case may be. Tax for a half yearly licence shall not exceed twice, and tax for an annual licence shall not exceed four times, the tax for a quarterly licence. The Government may grant such rebate as may be prescribed in case of half-yearly and annual licences.

(aa) Notwithstanding anything in Clause (a), the tax levied under the second proviso to Sub-section (2) of Section 3 shall be for the life time of the motor vehicle and shall be paid in advance in lumpsum by the registered owner of the motor vehicle or any other person having possession or control thereof:

Provided that if the tax in respect of the motor vehicles referred to in the second proviso to Sub-section (2) of Section 3 has already been paid under Sub-section (2) of Section 3 prior to the 1st April, 1987 the tax specified under the aforesaid second proviso shall be levied after expiry of the period for which the tax was so paid and such tax shall be paid within one month from the date of expiry of the said period.

(b) Where the tax for any motor vehicle has been paid for any quarter, half year or year and the motor vehicle has not been used during the whole of that quarter, half year or year or a continuous part thereof not being less than one month, a refund of the tax at such rates as may, from time to time, be notified

by the Government, shall be payable subject to such conditions as may be specified in such notification.

(bb) Notwithstanding anything in Clause (b), where lumpsum tax has been paid as specified in Clause (aa) a refund of the tax at such rates as may be from time to time be notified by the Government, shall be payable subject to such conditions as may be specified in the notification in the case of removal of the vehicle to any other State on transfer of ownership or change of address.

(2) Notwithstanding anything in Sub-section (1), no person shall be liable to pay tax in respect of a motor vehicle for a particular period, if the tax due in respect of that motor vehicle for that period has already been paid by some other person.

(3)(a) Where a tax in respect of a motor vehicle is paid by any person for a particular period or if no such tax is payable therefor, the licensing officer shall-

(i) grant to such person a licence, in such form as may be notified by the Government, to use the motor vehicle in any public place in the State during the said period; and

(ii) record in the certificate of registration in respect of the motor vehicle for which such certificate is granted under the Motor Vehicles Act, if no such certificate of registration is granted in respect of a motor vehicle, in a certificate in such form as may be notified by the Government, that the tax has been paid or that no tax is payable, in respect of the motor vehicle for the said period.

Provided that where a lumpsum tax is payable under the Act, payment of such tax by any person shall be recorded in the certificate of registration and no licence shall be granted to such person.

(b) Every licence granted under Clause (a) of this sub-section shall be valid throughout the State.

(4) Notwithstanding anything in Section 3 or Sub-section (1), the Government may, by notification from time to time, direct that a temporary licence for a period not exceeding thirty days at a time may be issued in respect of a motor vehicle any class on payment of such tax, and subject to such conditions as may be specified in such notification:

Provided that the rate of tax shall not exceed the maxima specified in columns (2) and (3) of the Second Schedule in respect of the classes of motor vehicles fitted with pneumatic tyres specified in the corresponding entry in column (1) thereof, and one and a half times the said maxima in respect of such classes of motor vehicles as are fitted with non-pneumatic tyres.

(5) No motor vehicle shall be used in any public place in the State at any time after the issue of a notification under Sub-section (1) of Section 3, unless a licence permitting its use during such time has been obtained as specified in Clause (a) of Sub-section (1) or Sub-section (4)."

The Third Schedule (see second proviso to Sub-section (2) of Section 3 of the Act) as amended by Amendment Act 23 of 1995 reads as follows :

THIRD SCHEDULE

[See Second Proviso to sub-section (2) of section 3]

Sl. No. Period/Class of vehicle Motor Cycles including-Tri-cycles, motor scooters and cycles with or without Attachment

Invalid carriage Cars and Jeeps and other Non-transport vehicles other than Omnibuses not exceeding 2286 Kgs. in ULW

Vehicles not Exceeding 60 CC Vehicles exceeding 60 CC Weighing not more than 500 kgs. ULW Weighing more than 500 kgs. but not more than 1524 Kgs. ULW Weighing more than 1524 kgs. but not more than 2286 Kgs. ULW Addl. tax payable in respect of vehicles under Cols.6 to 8 used for drawing trailers

(1) (2) (3) (4) (5) (6) (7) (8) (9)

1. At the time of registration of new vehicles 1050/- or 7% of the cost, whichever is higher 1890/-or 7% of the cost, whichever is higher 4693/- 5880/- or 7% of the cost whichever is higher 10,080/-or 7% of the cost whichever is higher 11200/-or7% of the cost whichever is higher 26041/-

2. If the vehicle is already regd. and its age from the month of registration is:

(1) Not more than 2 years 965/- 1740/- 638/- 5405/- 9265/- 10290/- 2334/-

(2) More than 2 yrs but not more than 3 years 880/- 1590/- 583/- 4930/- 8450/-- 9380/-- 2184/--

3. More than 3 years but not more than 4 years 795/- 1440/- 528/- 4455/- 7635/- 8470/- 1974/-

4. More than 4 years but not more than 5 years 710/- 1290/- 473/- 3980/- 6820/- 7560/- 1764/-

5. More than 5 years but not more than 6 years 625/- 1140/- 418/- 3505/- 6005/- 6650/- 1554/-

6. More than 6 years but not more than 7 years 540/- 990/- 363/- 3030/- 5190/- 5740/- 1344/-

7. More than 7 years but not more than 8 years 455/. 840/- 308/- 2555/- 437 4830/- 1134/-

8. More than 8 years but not more than 9 years 370/. 690/- 253/- 2080/- 3560/- 3920/- 924/-

9. More than 9 years but not more than 10 years 285/- 540/- 198/. 1605/- 2745/- 3010/- 714/-

10 More than 10 years but not more than 11 years 200/- 390/- 143/- 1130/- 1830/- 2100/- 504/-

11 More than 11 years but not more than 12 years 115/. 240/- 88/- 655/- 1115/- 1190/- 294/-

12. More than 12 years - - - - -

17. Section 3 of the Act is the normal charging section. Sub-section (1) of Section 3 declares the liability to pay tax. Sub-section (1) declares "motor vehicle" as the "taxable thing" and "the use or keeping it for use" as the "taxable event". A motor vehicle which is taxable under the Seventh Schedule, Entry 57, List III of the Constitution should be "suitable for use on roads". The words "suitable for use on roads" describe the different kinds of vehicles and not their condition. They exclude farm machinery, aeroplane, railways etc., though mechanically propelled are not suitable for use on roads as held by the Supreme Court in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, . Section 3 empowers the State Government to direct levy of tax on motor vehicles. Such a direction is issued by means of a notification which specifies (i) the class of motor vehicles on which; (ii) the rates for the periods at which, and (iii) the date from which the tax shall be levied. The Legislature while delegating its powers of notifying the rates of tax to the State Government has laid down guidelines in the First Schedule of the Act and ordained that the Government should not impose rates of tax in excess of the maximum prescribed in the Schedule.

18. The Constitution of India has distributed legislative power between the Centre and the States. The three Lists of the Seventh Schedule to the Constitution of India do this job. List I (Union List) enumerates the matters in respect of which the Parliament has the exclusive power to make the laws; List II (State List) contains the legislative fields reserved for State Legislature and List III (Concurrent List) lays down the items on which both the Parliament and the State Legislature can make the laws (with overriding effect over the law passed by the Parliament). In *International Tourist Corporation and Others Vs. State of Haryana and Others*, , the Supreme Court held that before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State Legislature must be clearly established as specified in Entry 97 of List I of Schedule 7 of the Constitution of India. In this case, we are concerned with the following two entries, both occurring in List-II (State List), viz., (i) Entry 56 : "Taxes on goods and passengers carried by road or on inland waterways", and (ii) Entry 57: "Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry 35 of List III." Entry 56 refers to the levy of tax on goods and passengers carried by road on or inland waterways. Entry 56 authorises a tax, the incidence of which is on "goods or passengers carried by road or on inland waterways", even though the amount of tax is measured by the fares and freights, or by the distance travelled. Entry 57 enables the levy of

tax on vehicles, whether mechanically propelled or not. Under this Entry, tax can be levied subject to entry 35 of List III (Concurrent List). Entry 35, it may be noted, deals firstly only with the mechanically propelled vehicles and, secondly, only with the principles on which taxes on such vehicles are to be levied.

19. The Motor Vehicles Act has been passed by the Central Legislature in exercise of the powers referable to Entry 35 of List III (Concurrent list) of the Seventh Schedule to the Constitution of India, which reads : "Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied." It may thus be seen that the Parliament is competent to pass a law not only relating to "mechanically propelled vehicles" (such as the Motor Vehicles Act, 1988) but also relating to "principles on which taxes on such vehicles are to be levied." The present Motor Vehicles Act does not contain any such "principles". Nor is there any other law laying down such principles. In the absence of such a law the Andhra Pradesh "Motor Vehicles Taxation Act is quite independent of the Motor Vehicles Act.

20. It is imperative that the tax imposed on a motor vehicle would not be valid unless it is compensatory or regulatory or does not have any nexus with the vehicles using the public roads. In such a case, the levy would be violative of Article 301 of the Constitution of India and would not be protected by Article 304 of the Constitution of India. It is well settled that the tax on motor vehicles is compensatory and regulatory tax levied for the use of the roads and it is not a tax on ownership or possession of motor vehicles.

21. It is trite, the presumption is always in favour of constitutionality of an enactment and the burden upon him who attacks it to show that there has been a clear transgression of constitutional principles and limits, whether it is a pre-constitutional or post-constitutional law. This position is well settled by the judgments of the Apex Court in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, and *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, . In *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, the Supreme Court held that the burden of proving all the facts which are requisite for the constitutional invalidity is upon the person who challenges the same. However, it is not to state that by reason of the presumption in considering the validity of the impugned law, the Court will be restricted to the pleadings only. The Court would be free to satisfy itself whether under any provision of the Constitution the impugned law can be sustained having due regard to the circumstances in which such law was enacted, as held by the Supreme Court in *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, , and *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, . For the same reason, the Court should, if possible, make such a progressive and/or narrow construction of the impugned statute as would sustain its constitutional validity, as opined by the Supreme Court in *Sunil Batra Vs. Delhi Administration and Others etc.*, . The

Supreme Court in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, , has opined that the Court should not cover grounds or make observations on points not directly involved in the proceedings, thereby meaning that unless a point arises for consideration and decision out of the pleadings of the parties, the Court shall not express its opinion on such point. It is well settled by the judgments of the Supreme Court in *Diamond Sugar Mills v. State of U.P.* AIR 1962 SC 652, *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, , and in *Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India*, , that when the vires of an enactment is challenged, and there is any difficulty in ascertaining the limits of a Legislature's power, the difficulty must be resolved, so far as possible, in favour of the legislative body, putting the most liberal construction upon the relevant legislative entry so that it may have the widest amplitude, and looking at the substance of the Legislation.

22. In India, any law to be valid has to satisfy the requirements of constitutional limitations contained in the Constitution. The first such requirement is that it should be passed by the competent legislature, that is to say the subject matter of the Law should belong to that legislature according to the distribution of Legislative power between the Union of India and the States. Secondly, the law should not infringe the fundamental rights guaranteed in Part III of the Constitution of India or any other substantive constitutional provisions. In *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, , the Supreme Court has opined that the except the above two grounds, there is no third ground on the basis of which the law made by the competent Legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds. Essentially, the question of constitutionality is always a question of power. It is true that it will become the duty of the Constitutional Courts under our Constitution to declare a law enacted by the Parliament or the State Legislature as unconstitutional when the Parliament or the State Legislature has assumed to enact a law which is void, either from want of constitutional power to enact it, or because the constitutional forms or conditions have not been observed, or where the law infringes the fundamental rights enshrined and guaranteed in part III of the Constitution or any other substantive constitutional provisions.

23. Legislature and Judiciary are coordinate organs of the State, of equal dignity and status under the constitutional scheme. It is permissible for the constitutional Courts to declare legislative enactments unconstitutional and void in some cases, but not because the judicial power is superior in degree or dignity to the legislative. The Court while declaring the law as invalid or unconstitutional is only enforcing the legislative will and the limits imposed by the Constitution on the law-making bodies. No Court can declare a statute unconstitutional and void, solely on the ground of unjust and harsh provisions, or because it is supposed to violate some natural, social, political or economic rights of the citizen, unless it can be shown that such injustice is, in fact, prohibited or such rights guaranteed

or protected by the Constitution. Strictly speaking, the Courts are not guardians of all kinds of rights of the people of the State, unless those rights are secured and protected by some constitutional provision which comes within the judicial cognizance.

24. In "A Treatise on the Constitutional Limitations by Thomas M.Cooley", it is stated that the Court cannot run a race of opinions upon points of right, reason, and expediency with the law-making power, and that any legislative act which does not encroach upon the power apportioned to the other organs of the State, being prima facie valid, must be enforced, unless restrictions upon the legislative power can be pointed out in the Constitution itself, and the case shown to come within them. In the same treatise, it is also stated that the Courts are not at liberty to declare statutes void because of their apparent injustice and impolicy, neither can they do so because they appear to the minds of the Judges to violate fundamental rights of republican Government, unless it shall be found that those rights are placed beyond legislative encroachment by the Constitution nor are the Courts at liberty to declare an enactment unconstitutional, because in their opinion, it is opposed to a spirit supposed to pervade the Constitution, but not expressed in words or discernible from the context, it is not permissible to limit the legislative power of the Legislatures by judicial interposition, except so far as the expressed words a written Constitution gives that authority to the Court. Further, in the same treatise by Thomas M.Cooley, it is aptly stated that the law-making power of the State recognises no restraints, and is bound by none except such as or imposed by the Constitution itself placing reliance on the opinion handed down in *Sill v. Village of Coming*, 15 NY 303.

Article 13(2) of the Constitution of India declares-

"The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

25. In *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, , it is pointed out that on the tax power of the State Article 265 is the first limitation, that authority of law means valid law, and that valid law implies legislative competence. The Second limitation, it is further said, is that the tax must be subject to the conditions laid down in Article 13 of the Constitution. Thus the legislative power of Parliament and the State Legislatures as conferred by Articles 245 and 246 stand curtailed by the fundamental rights Chapter of the Constitution.

26. The learned Counsel for the petitioners contended that the provisions impugned in the writ petition offend Article 14 of the Constitution inasmuch as the classification sought to be made by the impugned provisions are totally arbitrary, unreasonable and perpetuates an invidious discrimination between new four wheelers and old four wheelers though the new as well as old four wheelers belong to a "well defined class." In other words, according to the learned

Counsel for the petitioners, the equality clause enshrined in Article 14 is contravened by the Andhra Pradesh Legislature by enacting the impugned provisions. It is true that Article 14 guarantees equal protection as well as equal treatment, in similar circumstances, both in the privileges conferred and in the liabilities imposed. The guarantee of equal protection embraces the entire realm of "State action" and it would extend not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities upon him, but also in the matter of granting privileges. Article 14 mandates that there should be no discrimination between one person and another if as regards the subject-matter of legislation their position is the same; or in other words, its action must not be arbitrary but must be based on some valid principle which itself must not be irrational or discriminatory. The doctrine of equal protection and equal treatment does not take away from the State the power of classifying persons or things for legitimate purposes. It is recognised that every classification is in some degree likely to produce some inequality.

27. In *State of Bombay v. Balsara* F.N. AIR 1951 SC 318, the Supreme Court held that mere production of inequality is not enough to invalidate a law. In *Ameerunnissa Begum and Others Vs. Mahboob Begum and Others*, , *Babulal Amthlal Mehta Vs. The Collector of Customs, Calcutta*, , *Gopi Chand Vs. The Delhi Administration*, , the Supreme Court held that differential treatment does not per se constitute violation of Article 14 and that differential treatment denies equal protection only when there is no reasonable basis for the differentiation. It is well settled that if a law deals equally with members of a "well-defined class" of persons or things, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render the legislation which has been enacted in any manner discriminatory and violative of Article 14. What Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation which Legislature takes care to reasonably classify persons for legislative purposes and if it "deals clearly with all persons belonging to a "well-defined class," it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons or things. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. Article 14 does not insist that legislative classification should be scientifically perfect or logically complete. The Court would not interfere unless the classification results in pronounced inequality.

28. In *Basant Industries, Agra Vs. Collector of Central Excise*, , the Supreme Court held that no economic measure has yet been devised which is free from discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of criticism, under the equal protection clause, reviewing fiscal services or

measures. When a law is challenged as denying equal protection, the question for determination by the Court is not whether it has resulted in inequality, but whether there is some difference, which bears a just and reasonable relation to the object of legislation. Mere differentiation or inequality of treatment or inequality of burden does not per se amount to discrimination within the inhibition of the equal protection clause. It is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any irrational basis having regard to the object which the Legislature has in view.

29. However, taxing statutes must also satisfy the test of equal protection and are liable to be struck down if they do not. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , the Supreme Court held :

"It is now we established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order however, to pass the test of permissible classification two conditions must be fulfilled, namely; (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the Statute in question. The classification may be founded on different bases,-namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of the Supreme Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

30. The Supreme Court in *Rai Ramkrishna and Others Vs. The State of Bihar*, , after referring to its own judgments in *Kunnathat Thathunni Moopil Nair*'s case (supra) and *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, , held:

"... It is, of course, true that the power of taxing the people and their property is an essential attribute of the Government and Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the Legislature can be taxed by the Legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Article 19, Courts would naturally be circumspect and cautious. Where for instance it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts, would be justified in striking down the impugned statute as unconstitutional."

31. In *Khandige Sham Bhat v. Agrl. I.T. Officer* AIR 1963 SC 591, another Constitution Bench of the Supreme Court in para (10) held:

"... It is true taxation law cannot claim immunity from the equality clause of the Constitution. The taxation statute shall not also be arbitrary and oppressive, but at the same time the Court cannot, for obvious reasons meticulously scrutinize the impact of its burden on different persons or interests. Where there is more than one method of assessing tax and the Legislature selects one out of them, the Court will not be justified to strike down the law on the ground that the Legislature should have adopted another method which, in the opinion of the Court, is more reasonable, unless it is convinced that the method adopted is capricious, fanciful, arbitrary or clearly unjust...."

32. In the matter of taxation laws, the Court permits a greater latitude to the discretion of Legislature in the matter of classification. In tax matters, the State is allowed to pick and choose objects, persons, methods and even rates for taxation if it does so reasonably. The Legislature can devise classes for the purposes of taxing or not taxing, exempting or not exempting, granting incentives and prescribing rates of tax, benefits or concessions. Thus, in *Sham Bhat Khandige's* case (*supra*), the Supreme Court held that where there is more than one method of assessing a tax and the Legislature selects one out of them, the Court will not be justified to strike down the law on the ground that the Legislature should have adopted another method which, in the opinion of the Court, is more reasonable, unless it is convinced that the method adopted is capricious, fanciful, arbitrary or clearly unjust. In short, generally speaking, in the field of taxation, the Legislature has extremely wide discretion to classify item for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes.

33. The method of collecting life tax in respect of four wheelers other than chasis of motor vehicles and omnibuses on the basis of the cost of the vehicles cannot be condemned as arbitrary or irrational. Similarly, the classification sought to be made by the impugned provisions between two and four wheelers to which life tax is applicable and other motor vehicles or between new and old four wheelers cannot be said to be an impermissible classification. In our considered opinion, the classification sought to be made by the impugned provisions is based on a sound intelligible differential and it is intended to achieve the object behind the impugned amendments. The learned Special Government Pleader for Taxes submitted that the system of levy of life tax for two wheelers and four wheelers was introduced to avoid the difficulties faced while paying annual tax for two wheelers and four wheelers because their numbers are very large and the system of life tax was in fact introduced not only in the interest of the transport department's convenience, but also in the interest of the owners of the vehicles, and the introduction of this system has also reduced the expenses incurred by the department, in collecting the tax on annual basis. The learned Special Government Pleader for Taxes submitted that the system of levy of life tax by

Amendment Act 11 of 1992 has worked out very smoothly because, it was quite convenient to the vehicle owners as well as the transport department. The learned Special Government Pleader also submitted that though by Amendment Act 23 of 1995, the rate of taxes was enhanced from 5% to 7%, nobody chose to question the constitutional validity of the said amendment immediately after the amendment because that increase is quite fair and reasonable. The learned Special Government Pleader also submitted that the life tax, in the first instance, was introduced in the case of two wheelers by Amendment Act 15 of 1987 with effect from 1-4-1987 and since then it has been working smoothly. The learned Special Government Pleader further submitted that through the computation of the life tax on the basis of unladen weight and the value of the vehicle was introduced by Amendment Act of 1992, that amendment was not assailed immediately after the amendment by any of the petitioners or anyone else and the system had been working very well. It is also pointed out that even after Amendment Act 23 of 1995 enhancing the rate of life tax from 5% to 7% there was no challenge to the constitutional validity of the said amendment till the year 2000 and all these writ petitions were filed in the years 2000 and 2001 solely on the basis of the judgment of the Madras High Court in Krishnappan M's case (supra).

34. If the Legislature having taken into account the administrative inconvenience, the hardship caused to the owners of the non-transport two and four wheelers and with an object to reduce administrative expenses in collection of the tax with regard to two and four wheelers, introduced "life tax" as a method of collecting the tax, such a method cannot be regarded as arbitrary or irrational. As pointed out supra, in the tax matters, the Legislature has wider discretion in respect of classification of objects, persons or things for the purposes of taxation in the matter of methods as well as in the matter of rates.

35. Once power is there for the Legislature to tax, the quantum of tax levied by the statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered are all matters within the competence of the Legislature. In dealing with the contention raised by a citizen that the taxing statute contravenes Article 14 or Article 19, the Court would be very slow to invalidate such law and would naturally be circumspect and cautious. In that connection, the words of James Bradley Thayer are quite apposite:

"This rule recognizes that, having regard to the great, complex ever-unfolding exigencies of Government, much which will seem unconstitutional to one man, or body of men, may reasonably not seem so to another; that the Constitution often admits of different interpretations; that there is often a range of choice and judgment; that in such cases the Constitution does not impose upon the Legislature any one specific opinion, but leaves open this range of choice; and that whatever choice is rational is constitutional."

(See : Supreme Court Statecraft; the Rule of Law and Men: Wallace Mendelson: p4)

In Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, , it was observed:

".....On questions of economic regulations and related matters, the Court must defer to the legislative-judgment. When the power to tax exists, the extent of burden is a matter for the discretion of the law-makers. It is not the function of the Court to consider the propriety or justness of the tax or enter upon the reality of legislative policy. If the evident intent and general operation of the tax legislation is to adjust the burden with a fair and reasonable degree of equality, the constitutional requirement is satisfied....."

In ITO v. N. Takim Roy Rymbai AIR 1976 SC 670, it was held:

".....Give legislative competence, the Legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects which it would tax, and which it would not tax. So long as the classification made within this wide and flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others. Nor the mere fact that a tax falls more heavily on some in the same category, is by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14."

The Supreme Court in Federation of Hotel and Restaurant v. Union of India, , held:

"Classifications based on differences in the value of articles or the economic superiority of the persons of incidence are well recognised. A reasonable classification is one which includes all who are similarly situated and none who are not. In order to ascertain whether persons are similarly placed, one must look beyond the classification and to the purposes of the law.

In Jaipur Hosiery Mills (P) Ltd., Jaipur Vs. The State of Rajasthan and Others, , the Supreme Court held:

".....It has to be borne in mind that in matters of taxation the Legislature possesses the large freedom in the matter of classification. Thus wide discretion can be exercised in selecting persons or objects which will be taxed and the statute is not open to attack on the mere ground that it taxes some persons or objects and not others. It is only when within the range of its selection the law operates unequally and cannot be justified on the basis of a valid classification that there would be a violation of Article 14."

The Supreme Court of USA in San Antonio School District v. Rodriguez (1973) 411 US 1, held:

".....No scheme of taxation, whether the tax is imposed on property, income, or

purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection clause."

In *Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others*, , Krishna Iyer, J, speaking for the Constitution Bench of the Supreme Court in para (50) has observed:

"Fine-tuning to attain perfect equality may be a fiscal ideal but, in the rough and tumble of work-a-day economics, the practical is preferred to the ideal, provided glaring caprice or gross disparity does not make the levy arbitrary or frolicsome. Article 14 is not intellectual chess unrelated to actual impact or the wear and tear of life but even-handed justice with some play in the joints.

In *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, , the Supreme Court held:

"Certain principles which bear upon classification may be mentioned here. It is true that a State may classify persons and objects for the purpose of legislation and pass laws for the purpose of obtaining revenue or other objects. Every differentiation is not a discrimination. But classification can be sustained only if it is founded on pertinent and real differences as distinguished from irrelevant and artificial ones. The constitutional standard by which the sufficiency of the differentia which form a valid basis for classification may be measured, has been repeatedly stated by the Courts. If it rests on a difference which bears a fair and just relation to the object for which it is proposed, it is constitutional. To put it differently, the means must have nexus with the ends. Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the Court will be reluctant and perhaps ill-equipped to investigate. In this imperfect world perfection even in grouping is an ambition hardly even accomplished. In this context, we have to remember the relationship between the legislative and judicial departments of Government in the determination of the validity of classification. Of course, in the last analysis Courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judiciary cannot rush in where even the Legislature warily treads."

36. It is true that the validity of tax laws can be questioned in the light of the provisions of Articles 14, 19 and 301, if the said tax directly and immediately imposed a restriction on the freedom of trade; but the power conferred on the

Court to strike down a taxing statute if it contravenes the provisions of Articles 14, 19 and 301 has to be exercised with circumspection bearing in mind that the power of the State to levy taxes for the purpose of governance and for carrying out its welfare activities and services is a necessary attribute of sovereignty and in that sense it is a power of paramount character. In *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, a Constitution Bench of the Supreme Court has agreed with the submission that under Article 304(b), it would be open to the State to sustain the restriction imposed by the tax levied under the Assam Taxation (on goods carried by Road or on Inland Waterways) Act (10 of 1961) on the ground that the tax is levied not merely to raise general revenue for the State which itself is a public purpose, but that the tax is raised and utilised for keeping the waterways and the roads in good condition in the State. In the same judgment, the Constitution Bench has observed-

".....The law of taxation is on the ultimate analysis the result of the balancing of several complex considerations, and so, it would be unreasonable to insist upon the application of a general rule that if a tax is levied at a flat rate it must be treated as unreasonable. In the present case, the Legislature may have considered the requirements of the trade carried on by the producers of tea and may have thought that a flat rate would be just and fair to the trade as a whole. These are questions which must normally be left to the Legislature to decide."

In conclusion, we hold that the impugned provisions do not violate Article 14.

37. Similarly, we do not find any merit in the contention of the petitioners that the impugned provisions violate the fundamental rights guaranteed under Article 19(1)(g) and Article 321 of the Constitution of India. Article 19(1)(g) guarantees the freedom to all citizens to practice any profession, or to carry on any occupation, trade or business. This freedom means that every citizen has a right to choose his own employment or to take up any trade or calling, subject only to the limits as may be imposed by the State in the interest of the public welfare, and the other grounds mentioned in Clause (6). Thus, it is clear that under our Constitution, any citizen has the right to engage in any business, in any profession, occupation, trade or business which is known to the common law, as of right, and the State has the power to regulate or restrict any such profession, trade, occupation, business etc., on the grounds specified in Clause (6). The freedom guaranteed under Article 19(1)(g) is the natural right to enter into or carry on any trade, profession or calling which every person has, as the member of a civilised society, anterior to and independent of any legislation or grant by the State. While a citizen has a fundamental right to carry on a trade or business, it is well settled that he has no fundamental right to insist upon the Government or any other individual for doing business with him. Any individual as well as the Government, has got a right to enter into a contract with a particular person or to determine a person with whom he or it will deal and that no citizen has a fundamental right to insist upon the Government doing business with him, even though he may have a right under the ordinary law to sue for

specific performance or damages for breach of contract, in appropriate cases. Further, the right protected by Article 19(1)(g) is not absolute, but qualified and the qualifications are stated in Clause (6) of Article 19.

38. Article 21 guarantees protection of life and personal liberty. The main object of Article 21 is to prevent encroachment upon personal liberty by the Executive save in accordance with law, and in conformity with the provisions thereof. By the progressive interpretation of the concept "Right to Life" by the Hon'ble the Supreme Court, it is well settled now that the right to life, enshrined in Article 21 means something more than survival or animal existence. It would include the right to live with human dignity, it includes all those aspects of life which go to make a man's life meaningful, complete and worth living. In other words, every aspect of life which can make it possible to live with human dignity must be declared to be an integral component of the right to live. The petitioners are sought to be private individuals who have purchased non-transport four wheelers and they have challenged the levy and collection of one time life tax on the vehicles. We are at a loss to understand how the "right to live" assured under Article 21 is violated by the impugned provisions. The petitioners have utterly failed to make out any ground to hold that the impugned provisions violate either Article 14, 19(1)(g) or 21 of the Constitution. There is total lack of pleading and proof with regard to the contention that the impugned provisions violate the fundamental rights guaranteed under Articles 19(1)(g) and 21 of the Constitution of India.

39. The Supreme Court in *Bharat Singh and Others Vs. State of Haryana and Others*, , has declared that a party raising a point in a writ petition must plead not only relevant facts but also state facts by way of evidence in proof of facts so pleaded in support of such point. The Supreme Court in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, , and in *The Municipal Board, Maunath Bhanjan Vs. Swadeshi Cotton Mills Co. Ltd. and Others*, , has held that the constitutional Courts will not pronounce upon a constitutional issue, unless it has been raised in a proper lis between two or more contending parties. In the same case, the Supreme Court also held that the pleading in the writ petition must not be vague. One who invokes the power of constitutional Court to declare an enactment enacted by the competent Legislature to be unconstitutional must be able to show not only that the statute is invalid on certain constitutional grounds but that he had sustained or is in immediate danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indirect way. In these writ petitions, the petitioners have utterly failed to lay any factual matrix/ allegations relating to violation of fundamental rights guaranteed under Article 19(1)(g) and 21 of the Constitution, much less, any proof in support of that plea. Therefore, we hold that the contentions raised by the learned Counsel for the petitioners that the impugned provisions violate Article 19(1)(g) and 21 of the Constitution of India is totally misconceived, without any substance and remains unsubstantiated.

40. We do not find any merit in the contention of the petitioners that since the motor vehicle tax is a compensatory and regulatory tax, the life tax leviable under the impugned provision ceases to be compensatory and regulatory in nature, and it is rather confiscatory in nature and, therefore, such a tax cannot be sustained having regard to the constitutional limitations imposed on the law making power of the State Legislature under Entry 57 List II of VII Schedule. Entry 57 List II of VII Schedule does not specify any base for taxation. If more than one could be a basis, Legislature has the latitude to choose any one of the permissible/available basis and, therefore, it cannot be claimed that unladen weight of the vehicle should be the sole criteria or basis of taxation. In support of the plea that the life tax is confiscatory in nature, no materials are placed before the Court to show that by providing for levy of life tax, the State collects more money than what is needed to provide, maintain the roads and for providing regulatory measures and personnel involved therein. On the other hand, it is the specific case of the State that the State is spending huge sums of money out of its general revenue also in addition to motor vehicle tax collected by the State towards construction, maintenance of the roads and providing for regulatory measures and personnel involved in them.

41. The decisions cited by the learned Counsel for the petitioners to contend that the life tax ceases to be compensatory and regulatory are of no help to them. In *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, , the appellants therein challenged the validity of the Assam Taxation (on Goods carried by Roads or Inland Waterways) Act, 1954 mainly on the grounds that (1) the said Act, rules and the notifications issued thereunder were ultra vires the Constitution, because the Act was repugnant to provisions of Article 301 of the Constitution as the tax on carriage of tea through the State of Assam had the effect of interfering with the freedom of trade, commerce and intercourse; (2) that tea being a controlled industry under the provisions of the Tea Act, XXIX of 1953, the Union Government alone had the power to regulate the manufacture, production, distribution or transport of tea and the jurisdiction of the Assam Legislature was thus completely ousted; (3) that the tax under the Act was nothing but a duty of excise, in substance, though not in form, and was thus an encroachment on the Central legislative field within the meaning of Entry 84 of the Union List. The impugned Act was also challenged on the ground that it was discriminatory and thus void under Article 14 of the Constitution. The competence of the Assam Legislature to legislate on the subject was also questioned. The Constitution Bench held that the purpose and object of the Act which was passed by the Assam Legislature under Entry 56 in List II, is to collect taxes on goods solely on the ground that they are carried by road or by inland waterways within the area of the State and that being so, the Act has put a direct restriction on the freedom of trade, and since in doing so it has not complied with the provisions of Article 304(b), nor has it been validated by the assent of the President under Article 255(c) and in that view of the matter, the Act was declared to be void.

42. Subsequently, in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of*

Rajasthan and Others, the motor vehicle tax levied in the State of Rajasthan under the provisions of Rajasthan Motor Vehicles Taxation Act (11 of 1951), was assailed on the ground that it violated the freedom of trade, commerce and intercourse assured by Article 301 of the Constitution. This case was heard by a Bench consisting of seven (7) learned Judges of the Supreme Court. The majority opinion was handed down by S.K. Das, J, on behalf of himself, Kapur and Sarkar, JJ with Subba Rao, J concurring. The Supreme Court after an exhaustive review of the judgments handed down earlier in India as well as review of number of judgments of the Courts in Australia and America, held that a tax which directly and immediately impedes trade, commerce and intercourse would be violative of Part XIII of the Constitution and would be beyond the legislative competence of the State. However, the majority has opined the taxes imposed under the Rajasthan Motor Vehicles Taxation Act are compensatory taxes which do not hinder the freedom of trade, commerce and intercourse assured by Article 301 and hence, the said Act does not violate provisions of Article 301. The majority also held that regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution. The majority on the question of whether a motor vehicle tax could be compensatory and regulatory held that taxes imposed under the impugned Act are really tax on motor vehicles which use the roads in Rajasthan or kept for use therein and the taxes are payable by all the owners of motor vehicles, traders and others and in that view of the matter, the motor vehicle tax was only a compensatory and regulatory tax and not confiscatory. Further the majority has suggested a working test for deciding whether a tax is compensatory or not and the test is to enquire whether the trades people are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. The majority has emphasised that it would be impossible to judge the compensatory nature of a tax by a meticulous test, and in the nature of things that cannot be done. It was also held that if a statute fixes a charge for a convenience or service provided by the State or an agency of the State, and imposes it upon those who choose to avail themselves of the service or convenience, the freedom of trade and commerce may well be considered unimpaired. In such a case the imposition assumes the character of remuneration or consideration charged in respect of an advantage sought and received. In para (21) of the judgment, the majority has opined:

"We were addressed at some length on the distinction between a tax, a fee and an excise duty. It was also pointed out to us that the taxes raised under the Act were not specially ear-marked for the building or maintenance of roads. We do not think that these considerations necessarily determine whether the taxes are compensatory taxes or not. We must consider the substance of the matter and so consider, there can be no doubt that the taxes imposed are no hindrance to the freedom of trade, commerce and intercourse. If a statute fixes a charge for a

convenience or service provided by the State or an agency of the state, and imposes it upon those who choose to avail themselves of the service or convenience, the freedom of trade and commerce may well be considered unimpaired. In such a case the imposition assumes the character of remuneration or consideration charged in respect of an advantage sought and received. In *Armstrong v. State of Victoria* (1957) 99 CLR 28, Dixon, C.J. said: "The reason, as I venture to suggest, simply is that, without the bridge, the aerodromes and airways, the wharves and the sheds, the respective inter-State operations could not be carried out and that the charges serve no purpose save to maintain these necessary things at a standard by which they may continue. However it may be stated, the ultimate ground why the exaction of the payments for using the instruments of commerce that have been mentioned is no violation of the freedom of inter-State trade lies in the relation to inter-state trade which their nature and purpose give them. The reason why public authority must maintain them is in order that the commerce may use them, and so for the commerce to bear or contribute to the cost of their upkeep can involve no detracting from the freedom of commercial intercourse between States."

The Supreme Court of USA in *Morf. v. Bingaman* (1935) 298 US 407 and *Aero Mayflower Transit Co. v. Board of R.R. Commrs.* (1947) 332 US 497 has taken the view that the validity of a tax on vehicles must be examined not by way of but rather by the result, provided the tax collected is reasonable in amount and is not shown to be in excess of the compensation for the use of the roads. Our Supreme Court referred to the above view of the Supreme Court of USA with approval in *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, and has observed:

"21. According to that Court, since the purpose of the tax imposed by the State on motor vehicles using its road is to obtain from them a fair contributive share of the cost of constructing and maintaining the public highways and facilities furnished and to defray the expense of administering the police regulations enacted for the purpose of ensuring the public safety, the method used by the State for imposing tax does not seem to be of great significance; but such taxation, however, can only be for the purpose of compensating the State for the use of its roads and to defray the cost of construction and maintenance and expenses in regulating motor traffic, and it must affirmatively appear that such is the purpose of the legislation sought to be upheld. But, once a proper purpose is established, the State has considerable discretion in the method, measurement and amount of the tax."

In the same judgment, the Supreme Court speaking about the nature of compensatory tax in para (17) held:

"(17) Strictly speaking, a compensatory tax is based on the nature and the extent of the use made of the roads, as for example, a mileage or ton-mileage charge or the like, and if the proceeds are devoted to the repair, upkeep, maintenance and depreciation of relevant roads and the collection of the exaction

involves no substantial interference with the movement. The expression "reasonable compensation" is convenient but vague. The standard of reasonableness can only lie in the severity with which it bears on traffic and such evidence of extravagance in its assessment as come from general considerations. What is essential for the purpose of securing freedom of movement by road is that no pecuniary burden should be placed upon it which goes beyond a proper recompense to the State for the actual use made of the physical facilities provided in the shape of a road. The difficulties are very great in defining this conception. But the conception appears to be based on a real distinction between remuneration for the provision of a specific physical service of which particular use is made and a burden placed upon transportation in aid of the general expenditure of the State. It is clear that the motor vehicles require, for their safe, efficient and economical use, roads of considerable width, hardness and durability; the maintenance of such roads will cost the Government money. But, because the users of vehicles generally, and of public motor vehicles in particular, stand in a special and direct relation to such roads, and may be said to derive a special and direct benefit from them, it seems not unreasonable that they should be called upon to make a special contribution to their maintenance over and above their general contribution as taxpayers of the State. If, however, a charge is imposed, not for the purpose of obtaining a proper contribution to the maintenance and upkeep of the roads, but for the purpose of adversely affecting trade or commerce, then it would be a restriction on the freedom of trade, commerce or intercourse. See *Freightlines and Construction Holding Limited v. State of New South Wales* (1968) AC 625."

Further, the Supreme Court held that the amount of the charges and the method of collection are primarily for determination by the State itself, although they must be reasonable and fixed according to some uniform, fair and practical standard. Speaking about the burden of proof, the Supreme Court held that tax is attacked on the ground that it is excessive, the burden of proof is upon the one attacking its validity. In the instant case, there is absolutely no pleading muchless any proof in order to show that the life tax leviable under the impugned provisions on non-transport four wheelers is excessive. The petitioners have utterly failed to discharge the burden placed on them.

43. Simply because motor vehicles tax has to be compensatory and regulatory, it cannot be said that the motor vehicles tax can be regarded as a fee within the strict meaning of that term. A fee is generally defined to be a charge for a special service rendered to individual by some governmental agency. The distinction between a "tax" and a "fee", it is well settled, lies primarily in the fact that a tax is levied as a part of a common burden, while a "fee" is a payment for a special benefit or privilege; public interest seems to be as the basis of all impositions whether it is compensatory or otherwise, but in a "fee", it is some special benefit which the individual receives. As held in *Khyerbari Tea Company Limited's* case (supra) usually, compensatory in character may be claimed for a tax, provided the extent of the service rendered by the State by raising the tax is shown and it

is also proved that the recovery of the tax has some relation to the rendering of the said service. In that case, the Supreme Court accepted the contention of the learned Attorney-General that it would be open to the State to sustain the restriction imposed by the tax by virtue of the impugned provision in that case on the ground that the tax is levied not merely to raise general revenue for the State which itself is a public purpose, but that tax is raised and utilised for keeping the waterways and the roads in good condition in the State. Since the motor vehicle tax levied and collected can be used both for maintenance of roads which are usually available and also for construction of future roads, bridges, etc., the tax as such would not lose the characteristic of a compensatory and regulatory tax. It is not the requirement of law that the compensatory and regulatory nature of the motor vehicle tax would automatically result in the quantum of tax being linked or would have to be levied only on the basis of actual usage of the roads or on the basis of laden weight or size of the vehicle.

44. It needs to be emphasised that the motor vehicle tax is a tax and not a fee. The concept of *quid pro quo*, strictly speaking, is a lien to the principles of taxation. As long as the motor vehicle tax remains to be compensatory and regulatory, the legislature would be justified and competent to evolve method or modes of levy of tax and collection of the same. The levy of a flat rate of tax is therefore within the competence of the Legislature and such method adopted by the competent Legislature cannot be condemned as arbitrary or unreasonable. The point is that the levy of flat rate of tax would not denude the motor vehicle tax being compensatory and regulatory. Under the impugned provision, levy of tax is at a flat rate with a minimum amount payable under each category of vehicles specified in the III Schedule. The value of the vehicle depends upon its technological sophistication and, it is trite, more sophisticated motor vehicles require better roads conditions and keeping that in mind and to achieve that goal in a course of time if the law-maker levies higher tax on the owners of such vehicles, such a measure would not in any way violate Article 14 postulates nor such a measure could be condemned as an instance of invidious discrimination. The reviewing Court in the field taxation cannot assume the role of an operating surgeon to placate a deceased microscopic seed of discrimination because the law permits understandably and for social and economic good of the people a wide latitude and discretion to the law-makers in the field of taxation. So long as the tax collected on motor vehicles is utilised for the purpose of maintenance and construction of roads and providing other infrastructural facilities only, such a tax under no circumstances be regarded as non-compensatory and non-regulatory simply because, the law-maker has devised different measures and methods to levy motor vehicle tax on different categories of motor vehicles. The law does not insist uniformity either in methods of rates of tax. Therefore, mere difference in either methods of collection of tax or rates of tax with regard to different categories of motor vehicles will not per se result in an invidious discrimination.

45. In *State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and*

Others, , the Bombay Motor Vehicles Tax Act, 1958 prior to its amendment in 1987 provided for levy of tax on vehicles annually or quarterly. In 1987, by Section 3 of the Maharashtra Act, XIV of 1987, Sub-section (1C) was added to provide for review of one time tax at 15 times the annual rate on all motor cycles used or kept for use in the State. One time levy of tax in terms of amended provision was assailed before the Bombay High Court. A Division Bench of the Bombay High Court, Nagpur Bench, held that the levy of one time tax was beyond the legislative competence of the State Legislature and also beyond Entry 57 of List II of the Seventh Schedule. When the correctness of that opinion of the Division Bench of the Bombay High Court was assailed before the Apex Court on the ground that the said tax ceases to be compensatory or regulatory and also results in an invidious discrimination, the Supreme Court met those contentions by holding:

"(14) In this matter two principles have to be emphasized, firstly that the tax must be regulatory and compensatory and secondly, there must be no discrimination. About discrimination it is well to remember that a taxation law cannot claim immunity from the equality clause in Article 14 of the Constitution. But in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion and latitude in the matter of classification for taxation purpose is permissible. See the observations of this Court in *Income Tax Officer, Shillong v. N. Takim Roy Ryabai* AIR 1976 SC 670. Also see the observations in *Mrs Meenakshi alias Rama Bai and Others Vs. State of Karnataka and Others*, , *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, and *Khandige Sham Bhat v. Agricultural Income Tax Officer* AIR 1963 SC 591. The evidence on record shows that the life of motor cycles and tricycles normally exceeds 25 years. The so-called non-refund for certain period is not conclusive of the matter. Even if mathematical precision is not possible, we cannot say that it is wholly unmathematical. The collection of tax for a period of 15 years at one point of time is a convenient method enabling the owner to use the vehicle for more than 25 years, without having to visit the office to pay the tax periodically, and pay enhanced tax that may be levied during the 25 years of life of the vehicle. Regulatory and compensatory tax can be levied to the extent the State is required to pay for rendering the services. According to the State, the evidence on record shows that the costs of services is twice the total amount recovered from all types of vehicles. The balance of expenditure is met by the State from the general revenues. Even from this half collection, the motor cycles and tricycles contribute only 6.4 per cent. The percentage of motor cycles and tricycles is 566 to 58 per cent of all vehicles. Thus, even insubstantial increase in their rates cannot be said to be not a "regulatory or compensatory" tax measure."

The observation of the Supreme Court that the collection of tax for a period of 15 years at one point of time is a convenient method enabling to owner to use the vehicle for more than 25 years, without having to visit the office to pay the tax periodically, and pay enhanced tax that may be levied during the 25 years of life of the vehicle is an authority to state that the life tax leviable under the

impugned provisions on non-transport four wheelers taking into account a period of 12 years only cannot be condemned either as arbitrary or discriminatory. It is well settled that even a compensatory tax can be levied to the extent the State is required to pay for rendering the services, As already pointed out supra, it is not the case of the petitioners that the life tax collected or collectable under the impugned provisions are not expended by the State for rendering the services to the owners of the motor vehicles who use the roads and avail other infrastructural facilities.

46. In order to determine whether a tax is compensatory or not, what the Court has to see is whether what is required by way of tax is in truth and substance either a contribution towards the construction and maintenance of the roads, bridges and other facilities that are necessary for providing a smooth transport service or an exaction far in excess of what is needed for providing such facilities. Further, the Court cannot insist upon an exact correlation between the tax recovered and the cost so incurred because such exact correlation is in the very nature of things impossible to attain and impracticable to maintain. It is also well settled that the mere fact that a tax falls heavily on certain goods or persons may not always result in its invalidity, if it can be shown the tax so collected is used by the State for providing services to the tax payers. The levy of different rates of tax or different methods of tax ipso facto would not result in any hostile discrimination to attract the wrath of Article 14 postulates. In evolving different rates or method of tax, it is open to the law-maker to take into account the administrative convenience, convenience of the users of the facilities and such other considerations which are intended to reduce the administrative costs in collecting the taxes. It needs to be emphasized that the amount of wear and tear caused to the roads by any class of motor vehicles may not always be a determining factor in classifying motor vehicles for purposes of taxation.

47. In *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, , where the question of a fee was involved, the Supreme Court held that if atleast a good and substantial portion of amount collected on account of fees (may be in the neighbourhood of two-thirds or three-fourths) was shown with reasonable certainty to have been spent for rendering services to those from whom the fees were collected, the levy of fees could be upheld. The Supreme Court in *Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others*, , after referring to the judgment of the Supreme Court in *Kewal Krishan Puri's* case (supra) held:

"..... In law there cannot be much difference between the above principles applicable to fees and the principle that ought to govern the levy of motor vehicles tax which is claimed to be of a compensatory character."

In the instant case also, having regard to the materials placed on record by the State Government and the failure of the petitioners to lay any factual matrix, muchless, proof in support of it to bring home the charge of invidious discrimination, we are satisfied that the State Government has substantiated its

case that the impugned tax is truly compensatory in nature and not discriminatory nor confiscatory as contended by the petitioners.

48. The Supreme Court in *Malwa Bus Service (Pvt.) Ltd.*'s case (supra), dealing with the contention of the petitioners therein that the Punjab Motor Vehicles Taxation Act, 1924 as amended by Act 13 of 1981 by levying Rs. 35,000/- as the annual tax on a motor vehicle used as a stage carriage but only Rs. 1,500/- per year on a motor vehicle used as a goods carrier suffers from the vice of hostile discrimination held as follows:

"There is no dispute that even a fiscal legislation is subject to Article 14 of the Constitution. But it is well settled that a Legislature in order to tax some need not tax all. It can adopt a reasonable classification of persons and things in imposing tax liabilities. A law of taxation cannot be termed as being discriminatory because different rates of taxation are prescribed in respect of different items, provided it is possible to hold that the said items belong to distinct and separate groups and that there is a reasonable nexus between the classification and the object to be achieved by the imposition of different rates of taxation. The mere fact that a tax falls more heavily on certain goods or persons may not result in its invalidity. As observed by this Court in *Khandige Sham Bhat and Others Vs. The Agricultural Income Tax Officer*, , in respect of taxation laws, the power of Legislature to classify goods, things or persons are necessarily wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways. The Courts lean more readily in favour of upholding the constitutionality of a taxing law in view of the complexities involved in the social and economic life of the community. It is one of the duties of a modern Legislature to utilize the measures of taxation introduced by it for the purpose of achieving maximum social good and one has to trust the wisdom of the Legislature in this regard. Unless the fiscal law in question is manifestly discriminatory the Court should refrain from striking it down on the ground of discrimination. These are some of the broad principles laid down by this Court in several of its decisions and it is unnecessary to burden this judgment with citations. Applying these principles it is seen that stage carriages which travel on an average about 260 kilometres every day on a specified route or routes with an almost assured quantum of traffic which invariably is overcrowded belong to a class distinct and separate from public carriers which carry goods on undefined routes. Moreover the public carriers may not be operating every day in the State. There are also other economic considerations which distinguish stage carriages and public carriers from each other. The amount of wear and tear caused to the roads by any class of motor vehicles may not always be a determining factor in classifying motor vehicles for purposes of taxation. The reasons given by this Court in *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, , for upholding the classification made between stage carriages and contract carriages both of which are engaged in carrying passengers are not relevant to the case of a classification made between stage carriages which carry passengers and public carriers which transport goods. The petitioners have not placed before the Court

sufficient material to hold that the impugned levy suffers from the vice of discrimination on the above ground."

The very reasons stated by the Supreme Court in para (21) of the above judgment hold good to reject the contention of the petitioners herein that the impugned life tax is discriminatory and violative of Article 14. In conclusion, we hold that the life tax leviable under the impugned provision does not cease to be compensatory and regulatory tax and in fact the impugned tax is truly compensatory in nature.

49. The learned Counsel for the petitioners have heavily placed reliance on the judgment of the Division Bench of the Madras High Court in *Krishnappan, M. v. State of Tamil Nadu and Anr.* (supra). In that case, in a batch of writ petitions, mandamus was sought to declare Section 4(1-A)(a) read with Schedule 3 Part I of the Tamil Nadu Motor Vehicles Taxation Act, 1974 as amended by Amendment Act No. 27 of 1998, as unconstitutional, violative of Articles 14 and 19(1)(g) of the Constitution of India and inconsistent with scheme of Sections 3 and 4(1-A) (b) of the Tamil Nadu Motor Vehicles Taxation Act insofar as it imposes a compulsory demand of life tax with differential tax structure in respect of new motor vehicles to be registered in the State of Tamil Nadu. In Tamil Nadu, the levy of life tax on four wheelers was introduced for the first time in the year 1998 by Amendment Act 27 of 1998 which came into force with effect from 26.6.1998. The salient features of the said Act are as follows : (i) Different rates have been prescribed for four wheelers (non-transport vehicles) depending on the unladen weight as well as the cost of the vehicles classifying the vehicles under 3 categories, viz., (a) costing not more than five lakhs, (b) vehicles costing from Rupees five lakhs to Rupees ten lakhs and (c) vehicles costing Rupees ten lakhs and above, (ii) The vehicles are categorised on the basis of who owns the vehicle, that is to say, whether an individual, or a partnership firm or a company. Different rates were prescribed to the vehicles owned by individuals, firms and companies, (iii) Different rates were also prescribed for local vehicles and imported vehicles, (iv) Life tax was imposed compulsorily on all new vehicles which are registered after the impugned amendment, whereas, an option was given to owners of vehicles which were already registered in the State of Tamil Nadu before the impugned amendment and that the owners of the old vehicles brought from other States to the State of Tamil Nadu for re-registration after amendment were not provided with such option and those vehicles are treated as new vehicles for computation of tax and life tax is levied compulsorily.

50. The said Amendment Act No. 27 of 1998 was challenged before the Madras High Court on various grounds such as that the State Legislature lacked competence to enact the impugned provision; the impugned provisions offend Articles 14 and 19(1)(g) of the Constitution; the impugned tax is not compensatory or regulatory in nature and that the life tax levied under the impugned provision does not fall under Entry 57 List II of Schedule VII of the Constitution etc. The Amendment Act 27 of 1998 was struck down by the Madras

High Court on various grounds which are not relevant for the purpose of deciding the constitutional validity of the levy of life tax under the impugned provisions in these cases. However, the petitioners would place reliance on the above judgment of the Madras High Court to contend that the levy of life tax taking into account the cost of the vehicle as the basis for computing the rate of tax is without competence and violative of Articles 14 and 19(1)(g) of the Constitution of India. The Madras High Court has held that since the motor vehicle tax is compensatory and regulatory in nature, levy of life tax basing on the cost of the vehicle is unconstitutional. In so opining, the Madras High Court has placed reliance on certain observations of the Supreme Court in *Bolani Ores Ltd., v. State of Karnataka and Others* Vs. *D.P. Sharma and Others*, . Firstly, the case decided by the Madras High Court is distinguishable on facts viz., (i) Under the Tamil Nadu Act, the levy of life tax was based on the value of the vehicle ranging upto Rs. 5 lakhs, Rs. 10 lakhs and more than Rs. 10 lakhs. In that factual situation, the Madras High Court has opined that the levy of tax under the impugned provision is a levy on the ownership of the vehicle and on price range of the vehicle and it is not compensatory levy on the ground that the classification sought to be made by the impugned provision would not pass the two tests in order to be a permissible reasonable classification under Article 14 of the Constitution. However, in this case, the tax prescribed under the impugned provision is a minimum of Rs. 5,880/- or 7% of the cost of the vehicle, whichever is higher, (ii) The Madras High Court in the judgment has observed that by virtue of the amendment, the increase of tax was more than 400%. The Madras High Court has also observed that though the life of the motor vehicle generally speaking is about 15 years, the levy appears to have been determined calculating the tax for about 20 to 25 years. Whereas the levy under the impugned Act in this case is computed taking into account only 12 years as the life of the vehicle. The impugned Act also provides for refund of proportionate tax to the owners of the vehicles if they take their vehicles permanently to any other State for re-registration u/s 47 of the Motor Vehicles Act. Similarly, if a vehicle is brought to the State of Andhra Pradesh from any other State for re-registration, the levy of tax is reduced proportionately taking into account the remaining years of the life of the vehicle concerned, (iii) Under the Andhra Pradesh Motor Vehicle Taxation Act, no discrimination is made with regard to providing option for payment of quarterly tax or life tax whether the vehicle is new or old. (iv) There is no discrimination with regard to levy of life tax on the old vehicles whether they are within the State or brought from other States.

51. Having regard to the above substantial differences in the two enactments, the option of the Madras High Court cannot be applied to uphold the contention of the petitioners in this batch of writ petitions. Further, the Madras High Court in handing down the opinion has not considered two very important judgments of the Supreme Court reported in *Shaktikumar M. Sancheti v. State of Maharashtra* (supra) and *State of Bihar v. Bihar Chamber of Commerce* (supra) which have a direct bearing on the decision-making. In *Shaktikumar's* case (supra), the

appellants therein were either contractors or dealers of motor vehicles who purchased vehicles from outside the State and brought them into the State of Maharashtra. They were aggrieved by levy of Entry Tax on such motor vehicles u/s 3 of the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act (42 of 1987). Therefore, the appellants challenged it by way of writ petitions in the Bombay High Court. It was claimed that the levy was colourable exercise of the legislative power of the State as Entry 52 of List II of Seventh Schedule of the Constitution of India did not permit imposition of such tax. It was also urged that the legislation impeded freedom of the appellants under Article 301 of the Constitution. Another ground of challenge was that the imposition was double burden on the appellants and in absence of any rational nexus between the levy of tax and the constitutional objective it was violative of Articles 14 and 286 of the Constitution of India. The Bombay High Court did not find any merit in any of those submissions and held that the impugned Act was a valid piece of legislation as various entries in the Seventh Schedule were merely fields and not the powers of the legislation. It was held that the contention that the entry tax being leviable in the local area it could have been levied on movement of goods from one local area to another local area in the State only and not to more than one local area covering the entire State is devoid of any merit. The High Court did not find that the provision violated the constitutional guarantee under Article 301 or there was any double taxation involved in it.

52. The correctness of the above opinion of the Bombay High Court was questioned before the Apex Court in the above case. Before the Apex Court, the levy was challenged basically on two grounds - one, that the incidence of tax being on the purchase value of the motor vehicle it was in the nature of a purchase tax. Further, local area having a connotation of its own and being understood as an area which was administered by a local authority, the tax on entry of the vehicle in the State as such was bad for being vague and contrary to the concept of the local area as understood. Secondly, it was contended that it being in addition to the tax levied and collected as octroi by a Municipal Corporation or other, local authorities was violative of Article 286 of the Constitution. While rejecting the above contentions and dismissing the writ appeal and writ petitions, the Apex Court held:

"This section is an illustration of the charge or incidence of tax and the measure of tax rolled in one. It creates liability on the one hand for payment of tax on entry of any vehicle in a local area for use or sale therein and on the other provides that the amount of tax shall be on the purchase value of the vehicle. The latter part is what is commonly known as the machinery or procedural part pertaining to calculation and realization of tax. The charge is on the entry of vehicle into a local area for use or sale and not on its purchase. The submission founded on the expression, "there shall be levied and collected a tax on the purchase value of a motor vehicle" proceeded thus on a misconception. Therefore, so long as the levy is on the entry of the vehicle into a local area for use or sale therein it cannot be said to be invalid merely because the measure of

levy has been provided to be purchase value of the motor vehicle."

Therefore, the above opinion of the Apex Court is an authority to state that the levy of tax could be determined on the basis of the purchase value of the motor vehicles. The opinion of the Supreme Court in Shaktikumar's case (supra) as subsequently considered and retired by the Supreme Court in State of Bihar v. Bihar Chamber of Commerce (supra).

53. The Supreme Court in Venkateshwara Theatre Vs. State of Andhra Pradesh and Others, , while rejecting the contentions urged on behalf of the appellants therein that the impugned provisions contained in Sections 4 and 5 as amended by the Andhra Pradesh Entertainments Tax Act (Amendment Act 24 of 1984) providing for consolidated levy on the basis of gross collection capacity per show are ultra vires the legislative power conferred on the State Legislature under Entry 62 of List II held as follows:

"....One it is held that tax on entertainment could be levied by either of the two modes viz., per payment for admission or gross collection capacity per show, it is for the Legislature to decide the particular mode or modes of levy to be adopted and whether a choice should be available to the proprietor of the cinema theatre in this regard. The Legislature does not transgress the limits of its legislative power conferred on it under Entry 62 of List II if it decides that consolidated levy on the basis of gross collection capacity per show shall be the only mode for levy of tax on entertainments."

In the same judgment, the Apex Court dealing with the challenge to the impugned provisions on the ground of discrimination held:

"Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase "equality before the law" contains the declaration of equality of the of the civil rights of all persons within the territories of India. It is a basic principle of republicanism. The phrase "equal protection of laws" is adopted from the Fourteenth Amendment to the US. Constitution. The right conferred by Article 14 postulates that all persons similarly circumstances shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its Governmental power, has, of necessity, to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognised that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is however, required that the classification must satisfy two conditions, namely, (i) it is founded on an intelligible differentia which distinguishes those that are grouped together from others; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpably arbitrary. If there is equality and a uniformity within each group, the law will not be condemned as discriminative though due to some fortuitous

circumstances arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment.

Since in the present case we are dealing with a taxation measure it is necessary to point out that in the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes."

In that context, the Apex Court referred to the following observations of Justice Stewart, speaking for the majority in *San Antonio Independent School District v. Rodrigues* (1973) 411 US 1, with approval:

"No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the equal protection clause."

It needs to be noticed that the subject of a tax is different from the measure of the levy. The measure of the tax is not determinative of its essential character or of the competence of the Legislature. The life tax leviable under the impugned provision is a measure of levy and not subject of tax. Although, generally speaking, discrimination ground is available to attack validity of a law on the basis of Article 14, the Constitutional Courts have repeatedly held and reiterated that having regard to the wide variety of diverse economic criteria that go into the formulation of fiscal policy legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events or methods of taxation etc. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In *Federation of Hotel and Restaurant Association v. Union of India* (supra), the Constitution Bench held that in examining the allegations of a hostile, discriminatory treatment, what is looked into is not its phraseology, but the real effect of its provisions. The Court held:

".....A Legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this Court on the matter have permitted the legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes."

Entry 57 of List II does not specify any base for taxation. Therefore, if more than one could be a basis, the Legislature has the discretion and the latitude to choose any one of the permissible/available basis. Therefore, it cannot be said the motor vehicle tax should be levied always on the basis of unladen weight and it cannot be on any other basis. To the same effect, the judgment of the Division Bench of the Karnataka High Court in *Sree Gajanan Motor Transport Company*

Ltd. and Vs. State of Karnataka, and Others, , with which we are in respectful agreement.

54. In conclusion, we do not find any substance in any of the contentions raised by the learned Counsel for the petitioners while assailing the constitutional validity of the impugned provisions. In the result, we hold that the Andhra Pradesh Motor Vehicles Taxation (Amendment) Act, 1995 (Amendment Act 23 of 1995) and Andhra Pradesh Motor Vehicle Taxation (Amendment) Act, 1992 (Amendment Act 11 of 1992) are constitutionally valid. Consequently, we dismiss all the writ petitions with no order as to costs.

55. While entertaining these petitions, the Court had granted interim orders directing registration of the vehicles subject to the petitioners paying 50% of the life tax. Since we have dismissed the writ petitions, the petitioners are liable to pay the balance of life tax. We grant a month's time to the petitioners to pay the balance life tax, if not already paid.